



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/799,563	03/11/2004	James A. Bacnik	FFRZ 2 00153-3 (II)	7783

27885 7590 05/04/2006

FAY, SHARPE, FAGAN, MINNICH & MCKEE, LLP  
1100 SUPERIOR AVENUE, SEVENTH FLOOR  
CLEVELAND, OH 44114

EXAMINER
----------

DAVIS, CASSANDRA HOPE

ART UNIT	PAPER NUMBER
----------	--------------

3611

DATE MAILED: 05/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/799,563

Applicant(s)

BACNIK, JAMES A.

Examiner

Cassandra Davis

Art Unit

3611

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 February 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3-16,26 and 28-33 is/are pending in the application.
- 4a) Of the above claim(s) 6 and 11-13 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3,4,7,14,15,28-31 and 33 is/are rejected.
- 7) ☒ Claim(s) 5,8-10,26 and 32 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. Claims 3, 4, and 14-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
2. Regarding claim 4, it is unclear how the first arm is connected to both the back wall and the top wall. On lines 9-10, the claim recites "said first arm having a first end connected to said base wall of said channel member and a second end connected to said back wall". On lines 15-17, the claim recites "said first arm further comprises a first segment projecting rearwardly from said base wall and a second segment extending upwardly from the first segment to a top wall. Figure 3A does not show the first arm 138 with segments 150 and 152 connected to both the back wall 134 and the top wall 136.
3. In claim 14, it is unclear if the back wall recited on line 12 is the same as the back wall recited on line 7.
4. In claim 16, it is unclear what structural element corresponds to the claimed first and second arm.

***Claim Objections***

5. Claim 3 is objected to because of the following informalities: in claim 3, line 4, the phrase "said back wall" lacks antecedent basis. Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claim 7 is rejected under 35 U.S.C. 102(b) as being anticipated by Remius, WO 93/19448. Remius teaches holder comprising a channel member including a base wall 4, first sidewall 7 and a second sidewall 6 and a mounting potion including a clip (lower U-shaped member having one end connected to the back wall 3) and connecting members, wherein the connecting member has a first connecting arm 9 and second connect arm 8. The first connecting arm 9 has a first end connected to the base wall 4 of the channel member and a second end connected to the back wall 3.

The second connecting arm 8 has a first end connected to the base wall at 11 and a second end connected to the back wall.

8. Claim 28 and 33 are rejected under 35 U.S.C. 102(b) as being anticipated by Brinkman, U. S. Patent 5,899,011.

9. Brinkman teaches a label holder comprising a channel member, a clip member, and connecting member 64. The channel member is defined by a base wall 12a and first 18a and second 86a spaced-apart side walls that project outwardly from opposite ends of the base wall with respective first and second inner faces arranged for selectively accommodating a price label. The clip member adapted to receive and retain therein a projecting portion of a mounting wall of an associated retail shelf. The clip member comprises: a first leg 70 for contacting a first side of the projecting portion of the associated retail shelf and a second leg for contacting a second side of the same projecting portion of the associated retail shelf. The first leg includes a first segment projecting rearwardly and a second segment extending upwardly from the first segment. The second leg includes a first segment projecting rearwardly and a second segment extending upwardly from the first segment, wherein the first and second leg cooperate to define

an upwardly open slot 100 including a relatively narrow open end and a relatively wider closed end.

10. With respect to claim 33, figures 1 and 5 clearly show the open slot 100 having a narrow opening and an enlarged end portion.

***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 1 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith, U. S. Patent 6,142,322 in view of Pfendler et al., U. S. Patent 6,357,154.

13. Smith teaches a label holder comprising a channel member having a base wall 77, a first sidewall 111, a second sidewall 110, a resilient strip 30-33, and a document holder including a resilient finger 47, 48. Smith also teaches a connector assembly 40-44 mounted to the back face to the base wall 77. The connector taught by Smith does not having the first and second leg.

14. Pfendler teaches a label holder with a connector 28 mounted on a back face of the base wall 22. The connector includes a clip adapted to receive and retain a portion of a retail shelf. The connector clip comprises a first leg 32 and a second leg 30. The first leg includes a first segment projecting towards the second leg; and a second segment extending away from the second leg. The second leg includes a first segment projecting away from the channel member base wall and a second segment. The first and second legs cooperating to define an upwardly open slot including a relatively narrow open end and a relatively wider closed end.

15. Claims 29-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brinkman in view of Smith, U. S. Patent 6,142,322.

Smith teaches a label holder comprising a channel member having a base wall 77, a first sidewall 111, a second sidewall 110, a resilient strip 30-33, and a document holder including a resilient finger 47, 48.

With respect to claims 29-30, it would have been obvious to one having ordinary skill in the art at the time this invention was made to construct the label holder taught by Brinkman with the document holder comprising the resilient finger as taught by Smith to provide a means to display and hold additional document or sheet material.

With respect to claim 31, it would have been obvious to one having ordinary skill in the art at the time this invention was made to construct the label holder taught by Brinkman with the resilient bead or finger taught by Smith to provide a means for preventing the label from sliding along the length of the holder. See column 4, lines 1-7.

***Allowable Subject Matter***

16. Claims 5, 8-10, 26, 32 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

17. Claims 4, 14, 15, and 16 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

18. Claim 3 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

19. Applicant's arguments with respect to claims 1, 4, 7, and 14 have been considered but are moot in view of the new ground(s) of rejection.



***Conclusion***

20. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cassandra Davis whose telephone number is 571-272-6642. The examiner can normally be reached on Monday-Friday 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley Morris can be reached on 571-272-6651.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Cassandra Davis  
Primary Examiner  
Art Unit 3611

CD  
April 30, 2006